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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re Melanie K. et al., Persons Coming Under the Juvenile Court Law.	B278288 (Los Angeles County Super. Ct. No. CK77718)
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. NATALIA K., Defendant and Appellant.	

APPEAL from orders of the Superior Court of Los Angeles County, Julie Fox Blackshaw, Judge. Affirmed.

Michael D. Randall, for Defendant and Appellant.

Mary C. Wickham, County Counsel, Tracey Dodds, Principal Deputy County Counsel, for Plaintiff and Respondent.

Natalia K. (mother) appeals from an order denying her petition to change court orders under Welfare and Institutions Code section 388[1] and the order terminating her parental rights under section 366.26. She contends the court abused its discretion by conducting a section 388 hearing without a completed report under the Interstate Compact on Placement of Children (the Interstate Compact). (Fam. Code, § 7900 et seq.) She further contends the court's decision to proceed with the hearing violated her right to due process. In response, the Los Angeles County Department of Children and Family Services (Department) contends there was no abuse of discretion or due process violation, considering the lengthy delays in achieving permanency for the children. Mother also contends the court erroneously found the children were adoptable, because the Department had not demonstrated compliance with the Hague Intercountry Adoption Convention (the Convention) and the Department did not inquire into the prospective adoptive parents' criminal history for the time they resided in Mexico

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[1] All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

as young adults. The Department contends that mother's argument is irrelevant to the court's determination that under section 366.26, subdivision (c)(1), the children were likely to be adopted. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Early case history

Mother has two daughters, Melanie (born June 2009) and Kristen (born September 2010).[2] Mother and daughters were involved in an earlier dependency case from June 2009 to December 2010, based on mother's inability, and father's unwillingness, to provide adequate care for the girls. Melanie was found to be suffering from dehydration, hyperbilirubinemia, and hypothermia. Mother exhibited bizarre behavior and poor judgment. The case ended with a family law order granting mother sole legal and physical custody.

A new case was initiated in the fall of 2013 after concerns were raised about mother's ability to feed and care for her children. The Department reported there was evidence that mother suffered from mental and emotional problems, that she was feeding her daughters dog food and food from trash cans, the children were dirty and not

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[2] A younger son, K.K., was born in May 2016 during the current dependency proceeding. This appeal does not involve any orders relating to K.K.

wearing proper clothing, the home was in a deplorable and unsanitary condition, and the dogs in the house were so malnourished they had to be taken by an animal control officer. The court detained the children and ordered them to be suitably placed. The court took jurisdiction under section 300, subdivision (b), based on mother's mental and emotional condition, her inability to provide regular care and supervision over the children, and a detrimental home environment that endangered the children's physical health and safety. Mother received reunification services and monitored visits.

In February 2014, mother filed a section 388 petition seeking unmonitored and overnight visits. The court denied the petition without a hearing. It also ordered a psychological evaluation of mother under section 730.

Mother received reunification services for over 18 months. On July 29, 2015, the court held an 18-month review hearing under section 366.22. It terminated mother's reunification services and scheduled a permanency planning hearing under section 366.26 for November 3, 2015. The permanency planning hearing ultimately did not take place until eleven months later, on October 4, 2016.

The children's placement

During the dependency proceedings, the Department consistently recommended against placing the children with

mother. The recommendations were based primarily on concerns about the stability of mother's mental health.

The Department considered and investigated several relatives as placement options for the girls. When the children were initially detained in August 2013, law enforcement notified the social worker that maternal uncle Paul K. wanted the children released to him, but appeared to have a mental illness. The social worker reported that Paul was acting in a very loud and confrontational manner, demanding the children to be released to him immediately. Paul denied any problems with the house or the dogs and believed mother was capable of caring for the children. In its detention report, the Department recommended against placing the children with Paul, because he and mother were reportedly living in the same home that was found to be in deplorable condition, he owned the animals that defecated all over the home and were taken into custody by animal control, he denied having knowledge of mother's mental health issues, and his behavior was so out of control and demanding when the children were initially taken into custody that law enforcement had to escort the social worker to her car.[3]

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[3] When the social worker tried to explain that mother was being hospitalized on a psychiatric hold under section 5150, he "began screaming again stating 'what right do they have to judge my sister, they are not doctors and have no right to place her on a hold.'" When the social worker asked Paul questions to evaluate him as a possible placement,

During the initial stages of the case, the Department also decided against placing the girls with their maternal great aunts who lived in southern California. Maternal great aunt Magda was reportedly blind and 91 years old, and Paul was living with her and providing her care. Maternal great aunt Marie A. stated she could not care for the children because she operated a flower shop.

The court continued the jurisdiction hearing from October to November 2013 for a contest and ordered the Department to prepare a pre-release investigation report for Paul. The Department's pre-release investigation report identified concerns about placing the minors with Paul, in light of the case history of the earlier dependency case, Paul's tendency to minimize mother's mental health issues, and his overconfidence in her ability to safely parent the

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Paul's behavior was erratic and out of control. He claimed that the home in Bel Air (which Department social workers had observed to be in a deplorable condition) was neat and clean, and that the dogs belonged to him and he took them to the vets and groomers all the time. He claimed he was self-employed as a researcher and inventor who sells secret inventions to the British government and denied any awareness of mother's mental illness. He said mother had been evaluated by a psychiatrist four years ago and she did not have a mental illness. When the social worker asked Paul about mother's prior dependency case, he said it was all a big mistake. When the social worker told Paul that she needed to do some more investigation, he went out of control and began demanding the social worker wait for his attorney to arrive.

children. The Department recommended that the children could be released to him after approval under the Adoption and Safe Families Act of 1997, provided that the children were enrolled in preschool, both Paul and mother had weekly visits with a Department-approved family therapist to address parenting issues, Paul retained a Department-approved nanny or housekeeper at least twice a week to keep the house in a safe condition for the children (then ages 3 and 4), and no more than two small-to-medium, healthy, well-behaved dogs lived in the home with the children. Paul then filed two section 388 petitions, one in December 2013 and one in April 2014, seeking to have the children placed with him. The court denied both petitions.

A February 2014 letter from mother's therapist expressed concern that Melanie and Kristen were living with a foster mother who only spoke Spanish. In April 2014, the court ordered the Department to report on placement with English-speaking caretakers. After some difficulty locating an English-speaking foster home that had space for both girls, the Department eventually changed the girls' placement to their current foster family on July 31, 2014.

In January 2015, Marie and maternal great aunt Yvette A. filed a section 388 petition seeking placement of Melanie and Kristen with them. The Department recommended against the placement, because both were unaware of the case issues that led to the children's detention and gave contradictory information about Paul's role in the family. Rather than placing the girls with the

two aunts, the Department proposed beginning with monitored visits.

In March 2015, the court ordered the Department to assess Marie and Yvette as monitors for mother's visits and granted monitored visitation for Marie and Yvette once a week, and for Paul once a month. By July 2015 the Department recommended against Marie and Yvette as possible monitors or placement options based on the lack of visits and the children's opinions. Marie was only visiting every other week, Yvette had not visited at all, and the girls thought Marie was "mean." They wanted to live with their foster mother and not Marie.

Almost 18 months after Marie and Yvette sought to have the children placed with them, maternal great uncle Eli filed a section 388 petition on May 9, 2016, seeking placement. Eli lived in Pasco, Washington, where he was a father of three and a doctor. In the petition, Eli explained that he was unaware his grand-nieces were in foster care and only recently became aware of that fact. He expressed concern about abuse by the foster parents and asked the court to remove the girls from their foster placement and place them with him instead. The court set the matter for a hearing and ordered the Department to initiate an Interstate Compact report and provide an update in the Department's June 30, 2016 report. On July 14, 2016, an Interstate Compact social worker from Washington informed the Department that she had been assigned to assess Eli and his home.

Various other section 388 petitions were filed during 2016, including the following:

- An April 25, 2016 petition by Paul seeking to have the children placed in his custody. The court denied the petition on August 2, 2016.
- A May 10, 2016 petition by Paul seeking relative placement. The court denied the petition on August 2, 2016.
- A May 11, 2016 petition by mother to take the section 366.26 hearing off calendar and remove the children from the foster parents, based on assertions that foster mother was intimidating Melanie and the Department had not complied with the Convention. The court denied the petition without a hearing.
- A July 11, 2016 petition by Eli to continue the matter to permit time for a home study and seeking relative preference. The court denied the petition as to Melanie and Kristen because it did not identify changed circumstances.
- A July 11, 2016 petition by Paul to continue the matter to permit time for a home study of both Paul and Eli, and to have two social workers removed from the case because they were biased. The court denied the petition as not in the children's best interests.
- A July 13, 2016 petition again asking for a social worker to be removed from the case and seeking placement of Melanie and Kristen with relatives. The court denied the petition as not in the children's best interests.
- A July 15, 2016 petition by mother seeking to vacate the section 366.26 hearing and terminate jurisdiction

based on her relinquishing her parental rights in favor of Eli, her intended adoptive placement. According to Eli's declaration, the Department was refusing to initiate the Interstate Compact report ordered by the court on May 12, 2016. The court's eventual denial of this petition on October 4, 2016 is the subject of the current appeal.

- On August 1 and 2, 2016, four separate petitions were filed by either Paul or mother. The court denied all four without a hearing.

The court scheduled hearings on several of the section 388 petitions, including Eli's May 9, 2016 petition and mother's July 15, 2016 petition for August 2, 2016, but continued those two, as well as the permanency planning hearing under section 366.26, to September 29 and 30, 2016. The court also set a backup hearing date of October 4, 2016.

Mother met with a social worker on July 26, 2016 to discuss relinquishing her parental rights and designating Eli as the adoptive parent. The social worker advised her of the requirements for relinquishment, including the completion of Eli's adoption homestudy and a competency evaluation by a licensed psychologist or physician. Mother was also advised that after those requirements were met, the relinquishment paperwork must be signed in person with two witnesses present. On August 1, 2016, the social worker received a packet of relinquishment paperwork, but the requirements for relinquishment had not been met.

On August 2, 2016, the court authorized monitored visits for Eli. By September 29, 2016, Eli had only visited

Melanie and Kristen once, on August 22, 2016, and although the visit was scheduled to last two hours, he left after just 50 minutes. He had not inquired about additional visits or contacted the girls by phone. Melanie and Kristen described the visit as "good" and both were willing to visit with him again, but did not want to visit him at his home. The ICPC social worker in Washington state informed the Department that Eli's homestudy was not yet approved because Eli still needed to complete certification classes.

The Department would not accept mother's relinquishment without a completed adoption homestudy and a competency evaluation completed by a licensed psychologist or psychiatrist. The Department had not received either item by the hearing date on October 4, 2016.

October 4, 2016 hearing

On October 4, 2016, the court considered the section 388 petition filed by Eli on May 9, 2016, as well as the petition filed by mother on July 15, 2016. The court first considered Eli's section 388 petition, seeking to have the children placed with him. The court also indicated it was considering under section 361.3 whether the children should be placed with Eli. Mother took issue with the Department's report that characterized Eli as not interested in the children, arguing instead that the Department had known about Eli since February or March of 2015, and contrary to the requirements of section 309, "did not make a move

towards doing anything with regard to contacting the uncle seriously about placing the children with him until sometime in the last few months." Mother argued that the burden of coming forward was on the Department, not on Eli. Mother also claimed that it would "constitute serious error" for the court to move forward on a placement decision without the Interstate Compact report, predicting that the report would be very positive in Eli's favor, counter-balancing the Department's reports about the girls' placement with their current foster parents. Mother argued that the various factors outlined in section 361.3 "cannot be decided fairly without receiving the [Interstate Compact report] from Washington."

Minors' counsel argued that Eli's section 388 petition should be denied because he failed to establish that placing the children with him is in the children's best interest, as he has only visited them once since their suitable placement in July 2014. The Department argued that even though the court had ordered the Interstate Compact report, there was sufficient information before the court to deny the requested change in placement without the report. The court denied Eli's section 388 petition and declined to place the girls with him. The court found a change in placement would not be in the girls' best interests, citing the uncle's delay in expressing interest in placement, the continued delays with the Interstate Compact report, the fact that Eli had only made one short visit despite a court order authorizing multiple two-hour visits beginning in May 2016. The court noted that

it expected the Interstate Compact report would be positive towards Eli, but the length of the girls' time with their foster parents, and the fact that they were thriving in that placement, was a greater factor.

The court next considered mother's section 388 petition seeking to relinquish her parental rights and have the children placed with Eli. Mother initially argued her attempts to relinquish her parental rights should not be rejected on grounds that are not in her control. Counsel pointed out that there was no evidence before the court that mother or Eli had done anything to delay completion of the Interstate Compact report, and that it should be complete in a few days. The court responded by reframing the question as whether there was good cause to continue the section 366.26 hearing to allow the report to be completed, and mother's counsel countered that once the court ordered the report it could not proceed until it was completed. Mother also claimed that denying a continuance would violate her civil right to relinquish her children. Minors' counsel argued that under California law "[t]he dependency court need not grant a continuance in order to enable the parent to complete a pending relinquishment." Minors' counsel maintained that the section 366.26 hearing was originally scheduled for November 2015, had already been continued five times, and the court had already determined that it was not in the girls' best interest to be placed with Eli. Accordingly, another continuance would be an abuse of discretion, and mother's section 388 petition should be

denied. The Department joined in minors' argument, and also pointed out that mother did bear some culpability for the delay. The first section 366.26 hearing was scheduled for November 2015, and mother did not file her section 388 petition until July 2016, at which point, the Department promptly contacted Washington State to initiate the Interstate Compact process.

The court found the facts in this case similar to those at issue in *In re B.C.* (2011) 192 Cal.App.4th 129, 145–146, and in fact, mother knew as early as July 2015 that the court would be holding a section 366.26 hearing, but still waited a year to file the section 388 petition. The court found there was no good cause to continue the section 366.26 hearing, and in fact, "the family's efforts to obtain the result of continued [section 366.26] hearings repeatedly from this court has been a very concerted effort by the family to thwart this case from moving forward in the best interest of the children for permanency."

The court also heard argument at the hearing under section 366.26. Mother argued that the court could not make an adoptability finding until the Department had obtained criminal background checks and child abuse screenings for the time that foster parents were young adults in Mexico. She also argued parental rights should not be terminated because it would sever the sibling relationship the two girls had with their younger brother. The court clarified that it had ordered sibling visits to take place. Minors' counsel pointed out that the question of adoptability had already

been litigated on July 15, 2016, when the court found the children adoptable. The Department joined, and emphasized that no argument had been made that any exception to adoption applied. The court found by clear and convincing evidence that the children were adoptable, terminated mother's parental rights, and referred the matter to the Department for adoptive planning.

Mother appealed.

DISCUSSION

Mother contends the court erred in three respects. First, the court abused its discretion when it denied her July 15, 2016 section 388 petition without considering the anticipated Interstate Compact report. Mother's petition sought to vacate the section 366.26 hearing and terminate jurisdiction over the girls based on mother's decision to relinquish her parental rights in favor of adoption by Eli. Second, the court's refusal to continue the section 388 hearing violated her due process rights because mother did not have notice that the Interstate Compact report was going to be late and she did not have a meaningful opportunity to be heard. Third, at the hearing to terminate mother's parental rights under section 366.26, the court failed to apply the requirements of the Convention or require criminal history records from Mexico as to the foster parents.

Abuse of discretion claim

Mother contends the court abused its discretion when it denied her petition without considering the anticipated Interstate Compact report. Mother's opening brief also refers to section 361.3 as identifying the factors a court must consider in determining whether a minor should be placed with a relative. We review the denial of mother's section 388 petition for abuse of discretion. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318 (*Stephanie M.*) [the lower court's decision on a section 388 petition is "committed to the sound discretion of the juvenile court, and [its] ruling should not be disturbed on appeal unless an abuse of discretion is clearly established"].) To the extent the court's order might be viewed as a denial of relative placement under section 361.3,[4] we still apply the same standard of review. (*In re*

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[4] If a relative requests the minor placed in his or her home, section 361.3 provides that such a request will be given preferential consideration, and lists the factors the court should consider in deciding the child's placement. (§ 361.3, subd. (c)(2).) Section 319, subdivision (f)(2), specifies the relatives who "shall be given preferential consideration for placement of the child: an adult who is a grandparent, aunt, uncle, or sibling of the child." Section 309, subdivision (e)(1) directs the social worker to conduct an investigation within 30 days after a minor is removed from parental custody to locate the minor's grandparents "and other adult relatives of the child, as defined in paragraph (2)

Robert L. (1993) 21 Cal.App.4th 1057, 1067 ["[w]e are persuaded that the abuse of discretion standard should be applied to the review on appeal of the juvenile court's determination regarding relative placement pursuant to section 361.3"].) The same standard also applies if the court's decision is viewed as denying a continuance request. (*In re A.B.* (2014) 225 Cal.App.4th 1358, 1366 ["[w]e will reverse an order denying a continuance only upon a showing of abuse of discretion"].)

Reversal is appropriate only if we find the court has made an arbitrary, capricious or "patently absurd" determination. (*Stephanie M., supra*, 7 Cal.4th at p. 318.) We do not inquire whether the evidence would have supported a different order, nor do we reweigh the evidence and substitute our judgment for that of the lower court. (*Ibid.*) We ask only whether the court abused its discretion with respect to the order made. (*In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1351.)

At the beginning of the hearing on October 4, 2016, the dependency court announced its intention to hold a relative placement hearing under section 361.3 in connection with the hearing on Eli's section 388 petition. Whether making its decision on mother's petition under section 388 or a more generalized placement decision under section 361.3, the court was required to determine whether it was in the girls' best interests to move from their current foster family to

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of subdivision (f) of Section 319, including any other adult relatives suggested by the parents."

Eli's home. A parent petitioning for relief under section 388 must present new evidence or a change of circumstances and demonstrate modification of the previous order is in the child's best interest. (*Stephanie M., supra*, 7 Cal.4th at p. 317.) In determining whether a minor should be placed with a relative under section 361.3, the court considers various factors, including the best interests of the child, the parent's wishes, the nature and duration of the relationship between the child and the relative, and the relative's ability to provide a safe, secure, and stable environment for the child. (§ 361.3, subd. (a).)

The only requirement imposed by section 361.3 is that the court consider, as a first priority, whether placement with a close relative "is appropriate, taking into account the suitability of the relative's home and the best interest of the child." (*Stephanie M., supra,* 7 Cal.4th at p. 321, italics omitted.) Section 361.3 does not create an evidentiary presumption that placement with a relative is in the child's best interest, nor is preferential consideration under that section a guarantee that a child will be placed with a relative. (*Id.* at p. 320; *In re R.T.* (2015) 232 Cal.App.4th 1284, 1295 (*R.T.*); *In re Joseph T.* (2008) 163 Cal.App.4th 787, 798 (*Joseph T.*) ["[t]he relative placement preference . . . is not a relative placement *guarantee*"].)

Courts have uniformly concluded that section 361.3 gives relatives preferential consideration "at least through the family reunification period." (*Joseph T.*, *supra*, 163 Cal.App.4th at p. 795 and cases cited therein.) If relatives

are not identified until after reunification services are terminated, preferential consideration is not automatic, particularly where the court has identified adoption as a goal. (See, e.g., *In re K.L.* (2016) 248 Cal.App.4th 52, 66 ["relative placement preference does not apply where . . . the social services agency is seeking an adoptive placement for a dependent child for whom the court has selected adoption as the permanent placement goal"]; *In re Lauren R.* (2007) 148 Cal.App.4th 841, 854–855 ["there is no relative placement preference for adoption"]; *In re Sarah S.* (1996) 43 Cal.App.4th 274, 276–277 [section 361.3 does not apply "to a placement made as part of a permanent plan for adoption" after reunification efforts have failed]; *In re Jessica Z.* (1990) 225 Cal.App.3d 1089, 1098, quoting *In re Baby Girl D.* (1989) 208 Cal.App.3d 1489, 1493 [once "a case moves from reunification to permanency planning, . . . there is 'no longer any reason to give relatives preferential consideration in placement'"].)

After the court has terminated reunification services, "the only statutory preference in the adoption process is for a 'relative caretaker or foster parent' as provided in subdivision (k) of section 366.26," which gives a relative caretaker or foster parent "priority over others regarding the order in which applications for *adoption* are processed," and assures that a relative *who has been caring for the child* will have his or her application considered before those submitted by other relatives and nonrelatives. (*Sarah S., supra*, 43 Cal.App.4th at pp. 277, 285.) In other words, by

the time parental rights are being terminated at a section 366.26 hearing, the agency should take into consideration the impact of removing a child from a long-term placement, and give preference to such a placement if possible.

Mother relies on *R.T.*, *supra*, 232 Cal.App.4th 1284 to argue the court abused its discretion in refusing to change the girls' placement. The appellate court in *R.T.* reversed the lower court's decision to deny a relative's section 388 petition which sought placement after reunification services had either been bypassed or terminated. (*Id.* at pp. 1299–1301.) The father had identified relatives early in the case, and the relatives responded promptly, despite agency inaction. The father had identified two paternal aunts who wished to be considered for placement, but the newborn minor was placed with a nonrelated extended family member instead. At the disposition hearing, the court denied reunification services, set the matter for a permanency hearing, rejected both parents' requests to place the infant with one of his paternal aunts, and instead ordered the infant to remain with the nonrelated extended family member. The agency was aware of the aunts' interest in placement before the minor was even one month old, and their home inspections were completed before he was three months old. (*Id.* at p. 1293.) A month later, one of the aunts filed a section 388 petition expressing her desire to adopt the minor, claiming she had been denied preferential consideration for placement. (*Id.* at pp. 1293–1294.) The court took eight months to conduct a hearing on the aunt's

section 388 motion. A caseworker testified that the agency never considered the aunts for placement, despite having conducted a home assessment. (*Id.* at p. 1294.) The appellate court acknowledged that it was "presently unsettled" whether a relative is entitled to preference under section 361.3 when the request is made after reunification services have been terminated. (*Id.* at p. 1300.) Because both the agency and the court erroneously failed to give the relatives preferential consideration earlier in the case, when the error was subsequently raised by a section 388 motion, "the court should have directed the agency to evaluate the relatives for placement under the relevant standards [citation] and, upon receipt of the evaluation and the agency's placement recommendation, exercised its independent judgment to consider if relative placement was appropriate." (*Ibid.*)

In a more recent case, *In re Isabella G.* (2016) 246 Cal.App.4th 708 (*Isabella G.)*, the child's paternal grandparents sought custody immediately after detention. The agency failed to assess their home and compounded its error by falsely informing the grandparents there was a mandatory one-year waiting period before the child could be moved from the foster family with whom she had been placed. (*Id.* at pp. 713–714.) After being repeatedly rebuffed in their efforts to obtain custody, the grandparents hired a lawyer, who filed a section 388 petition after reunification services had been terminated. (*Id.* at p. 715.) The appellate court followed *R.T.*, reasoning that grandparents had

"requested placement prior to the detention, jurisdictional and dispositional hearings," "before the 12-month review hearing," and "after the case was referred for a section 366.26 hearing," and the agency refused to comply with its obligation to conduct a home assessment on any of those occasions, "disregard[ing] the legislative preference for relative placement throughout [the] dependency case." (*Id.* at pp. 722–723.) The court reversed the order denying the grandparents' section 388 petition and directed the court to consider relative placement under section 361.3, as it should have done earlier in the case. (*Id.* at p. 724–725.)

In both *R.T.* and *Isabella G.*, the relatives were known to the social services agencies but were not considered as placement options during the early stages of the case, as required under section 361.3. Here, the Department appropriately considered and recommended against placing the children with a number of relatives, including maternal uncle Paul, and maternal great aunts Magda, Marie, and Yvette. Mother tries to fault the Department for the large time gap between when the children were detained in August 2013 and when Eli filed a section 388 petition in May 2016, but there is no evidence in the record that any family member had ever identified Eli as a possible placement option to the Department until he filed a section 388 petition in May 2016. Even at that late stage in the proceedings, when it is arguable whether a relative is even entitled to preferential consideration under section 361.3, the court still ordered an Interstate Compact report and the Department

initiated the interstate process. Mother's July 15, 2016 section 388 petition must be considered in context. Mother had already received 18 months of reunification services by July 29, 2015, and the section 366.26 hearing was originally scheduled to take place November 3, 2015. Instead, mother and other family members filed multiple section 388 petitions challenging the Department and the foster family, and the delays associated with those challenges caused the section 366.26 hearing to be delayed by almost a full year. Ultimately, the hearing on mother's July 15, 2016 section 388 petition and the section 366.26 hearing did not take place until October 4, 2016, when the court denied the petition.

Because Eli lives in Washington State, an Interstate Compact homestudy was necessary before the Department could place the children with him. While the Interstate Compact process did take time, there is no evidence in the record that the Department caused any of the delay between May and October 2016. Accordingly, neither *R.T.* nor *Isabella G.* support a finding that the trial court abused its discretion in denying mother's section 388 petition here.

Aside from the factual and procedural distinctions between the present case and either *R.T.* or *Isabella G.*, mother's argument on appeal fails because she cannot plausibly argue that the court's decision on her section 388 petition would have been any different had the court received the Interstate Compact report before denying the petition. At the October 4, 2016 hearing, the court

acknowledged that it was quite likely that the report would return with a positive evaluation of Eli. However, that evaluation is not the sole factor in determining the girls' best interests, and the bond they developed with their foster parents over two years is a primary factor. This is even more true when considered in contrast to the lack of any demonstrated interest or commitment by Eli, who only visited once over six months even though the court permitted visits of up to two hours twice a month. On these facts, we find no abuse of discretion.

Due process claim

Mother also contends the court's refusal to continue the section 388 hearing violated her due process rights because she did not have notice that the Interstate Compact report was going to be late and did not have a meaningful opportunity to be heard.

We apply a de novo standard of review to mother's due process argument. (*In re Dakota H.* (2005) 132 Cal.App.4th 212, 222.) "'It is axiomatic that due process guarantees apply to dependency proceedings.' [Citations.] The United States Supreme Court recognizes the concept of 'due process' cannot be precisely defined. [Citation.] In deciding requirements of due process, the court evaluates three elements: the private interests at stake, the government's interest, and the risk the procedures used will lead to an erroneous decision. [Citations.] [¶] The private interest at

stake in a dependency proceeding is enormous. A parent's interest in the companionship, care, custody and management of his or her children is a fundamental civil right. [Citation.] Children, too, have a compelling independent interest in belonging to their natural family. [Citation.] In addition, each child has a compelling interest to live free from abuse and neglect in a stable, permanent placement with an emotionally committed caregiver. [Citations.] The governmental interest in a child's welfare is significant. '[T]he welfare of a child is a compelling state interest that a state has not only a right, but a duty, to protect.' [Citations.]" (*Id.* at pp. 222–223.) The California Supreme Court has emphasized that "[o]nce reunification services are ordered terminated, the focus shifts to the needs of the child for permanency and stability." (*In re Marilyn H.* (1993) 5 Cal.4th 295, 309.)

Mother argues that her due process rights were violated because without the Interstate Compact report, she was deprived of a meaningful opportunity to be heard. Weighed against the children's interest in permanency and stability and the government's interest in protecting the children's physical safety, however, mother's legal interests are substantially diminished at this late stage of the proceedings. Mother seeks to elevate her desire to relinquish her children for adoption by Eli over her children's rights to permanency and stability. She also ignores the fact that her attempted relinquishment was still incomplete.

Mother cannot show a cognizable legal right to cause further delay in a dependency proceeding solely to permit time to complete the requirements for her relinquishment. Mother's section 388 petition rested on a belated attempt to relinquish her parental rights to free the girls for adoption by a relative, despite the fact they were significantly bonded to their foster caretakers. Division Three of this court has already held that granting a continuance under such circumstances constitutes an abuse of discretion. (*In re B.C.* (2011) 192 Cal.App.4th 129, 145 (*B.C.*) ["it is *not* within a child's best interests to continue an already much-delayed Welfare and Institutions Code section 366.26 hearing in order to enable a parent to complete a last-minute 'end-run' around an anticipated termination of parental rights"].) In *B.C.*, the minor was detained at birth, and his mother was in custody and on a mental health hold. The mother disappeared after being released from custody and was not located until the minor was almost a year old. The minor was placed with foster parents at the age of six months. The mother's family did not learn of the dependency proceedings until the minor was around nine months old. A maternal aunt came forward seeking to adopt the minor, and the court ordered monitored visits for the maternal aunt. Shortly thereafter, the minor's counsel sought and the court entered a "do not remove" order requiring the Department to notify minor's counsel and obtain a court order before changing minor's placement from the foster family to maternal aunt. (*Id.* at pp. 135–136.) The mother was located when the

minor was close to a year old, and foster parents sought and obtained de facto parent status. Foster parents wanted to maintain the minor's placement, while the mother, maternal aunt, and the Department advocated to change the minor's placement to maternal aunt. The court ordered a bonding study and scheduled a December 2009 contested placement hearing and a section 366.26 hearing to terminate parental rights. The hearing was delayed to February 2010, and then the mother sought an additional 30-day continuance to complete a relinquishment in favor of adoption by maternal aunt. (*Id.* at pp. 138–140.) The appellate court concluded it was not in the minor's best interests and therefore an abuse of discretion to grant a continuance when "(1) the hearing had been continued multiple times; (2) the parent intended to complete a relinquishment of parental rights designating adoptive custody to go to a relative; and (3) substantial questions had been raised as to whether placing the child with the relative was in the child's best interests." (*Id.* at p. 146.) The lengthy history of the present case similarly demonstrates that mother has no legal right to a continuance so she can relinquish her parental rights. The girls were detained from mother in August 2013, three years before the hearing mother was seeking to delay. Just as in *B.C.*, the section 388 petition had been continued multiple times, and the Department had raised serious questions about whether the intended relinquishment was in the children's best interests. Eli had made little or no effort to

establish a relationship with the girls, and the girls did not want to visit him at his home, much less live with him.

Mother's argument also fails because she cannot show any prejudice stemming from the court's decision to proceed without the delayed Interstate Compact report. Indeed, the court anticipated the report would place Eli in a favorable light: The key factor in the court's decision to deny mother's petition was the strength of the bond between the girls and their current foster parents. "[E]ven assuming that it is a glowing [Interstate Compact report], it is not in the best interest of the girls that they be moved at this time."

We conclude that the court's decision to deny mother's section 388 petition and proceed to the 366.26 hearing without waiting for the completed Interstate Compact report to be completed was not a denial of due process.

Hague Intercountry Adoption Convention claim

Mother contends that the court could not find the children adoptable under section 366.26, subdivision (c)(1), without complying with the Convention. However, mother has not established that the Convention applies to a termination of parental rights under section 366.26.

Before the court may terminate parental rights and order a minor placed for adoption, it must find, by clear and convincing evidence, "that it is likely the child will be adopted." (§ 366.26, subd. (c)(1); *In re K.B.* (2009) 173 Cal.App.4th 1275, 1292, [describing low threshold for a

finding of adoptability].) "Usually, the issue of adoptability focuses on the minor, 'e.g., whether the minor's age, physical condition, and emotional state make it difficult to find a person willing to adopt the minor.' [Citation.] However, 'in some cases a minor who ordinarily might be considered unadoptable due to age, poor physical health, physical disability, or emotional instability is nonetheless likely to be adopted because a prospective adoptive family has been identified as willing to adopt the child.'" (*In re Brandon T.* (2008) 164 Cal.App.4th 1400, 1408, quoting *In re Sarah M.* (1994) 22 Cal.App.4th 1642, 1649–1650.)

At the time of the October 4, 2016 hearing under section 366.26, seven-year-old Melanie and six-year-old Kristen were healthy and well-adjusted. They had been out of their mother's custody for over three years and had lived with their current foster family for more than two years. Before terminating mother's parental rights, the court found by clear and convincing evidence that Melanie and Kristen were likely to be adopted. That finding is supported by substantial evidence.

We reject mother's unsupported contention that simply because the foster parents were born in Mexico and came to the United States as young adults, the court must comply with the Convention before terminating parental rights. Under California law, the Convention applies to adoptions where individuals residing in a country that is a party to the Convention are adopting a child resident in the United States. (See Fam. Code, § 8900.5, subds. (e) & (f).) Here,

evidence established that the current foster family was residing in Los Angeles, and mother's reply brief concedes that they "clearly intend to remain in the U.S." Because there is no evidence in the record that foster parents have any intention to move to Mexico, mother's argument is speculative at best.

Mother also claims the court could not find the children adoptable until the Department furnished a criminal background check for the time foster parents lived in Mexico. The court was not required to make such an inquiry at the section 366.26 hearing. To terminate parental rights at such a hearing, the court is only required to find that the minors are adoptable, not that the prospective adoptive family is suitable. (*In re R.C.* (2008) 169 Cal.App.4th 486, 493–494.)

The orders are affirmed.

KRIEGLER, Acting P.J.

We concur:

BAKER, J. LANDIN, J.*

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* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.